

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

REMY INTERNATIONAL, INC., AND
FRANKLIN POWER PRODUCTS, INC.,

Defendants

Civil Action No.

1:06-cv-0973-JDT-TAB

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CONSENT DECREE

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CONSENT DECREE

WHEREAS, Defendants Remy International, Inc., and Franklin Power Products, Inc., own and/or operate a diesel engine manufacturing facility that is or was located at 400 North Forsythe Street in Franklin, Indiana ("Facility");

WHEREAS, Plaintiff the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), is concurrently filing a Complaint in this action pursuant to Section 309 of the Clean Water Act ("CWA"), 33 U.S.C. § 1319, against Defendants for alleged violations of Section 307 of the CWA, 33 U.S.C. § 1317, and its implementing regulations, in connection with the discharge of pollutants from Defendants' Facility to the City of Franklin publicly-owned treatment works in excess of applicable standards and limits governing such discharges;

WHEREAS, Defendants do not admit any liability to the United States arising out of the transactions or occurrences alleged in the Complaint;

WHEREAS, notice of commencement of this action has been given to the State of Indiana as required by Section 309(b) of the CWA, 33 U.S.C. § 1319(b);

WHEREAS, the United States and Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid protracted litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest;

NOW THEREFORE, with respect to the matters set forth in the Complaint, and before the taking of any testimony, without adjudication of any issue of fact or law, and upon the consent and agreement of the Parties to this Consent Decree, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and Section 309(b) of the CWA, 33 U.S.C. § 1319(b).

2. This Court has personal jurisdiction over the Defendants, and venue is proper in this District pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. § 1391(b), (c), and § 1395(a), because Defendants reside and/or conduct business in this District and the violations alleged in the Complaint occurred within this District.

3. Defendants shall not challenge the terms of this Consent Decree or the Court's jurisdiction to enter and enforce this Consent Decree, and Defendants consent to the entry of this Consent Decree without further notice. Solely for purposes of this Consent Decree, the underlying Complaint, and any actions to enforce the Consent Decree, Defendants waive all objections and defenses they may have to jurisdiction of the Court or venue in this District.

II. PARTIES BOUND

4. This Consent Decree is binding upon the United States and Defendants and any successors, assigns or other entities or persons otherwise bound by law. Any change in ownership or corporate or legal status of Defendants, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

III. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the CWA or in regulations promulgated pursuant to the CWA shall have the meanings assigned to them in the CWA or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are

used in this Consent Decree, the following definitions shall apply:

- a. “Complaint” shall mean the complaint filed by the United States against Defendants in the above-captioned civil action and corresponding civil action number;
- b. “Consent Decree” or “Decree” shall mean this Decree;
- c. “CWA” shall mean the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*
- d. “Day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday or federal holiday, the period shall run until the close of business the next business day;
- e. “Defendants” shall mean Remy International, Inc., and Franklin Power Products, Inc.;
- f. “DOJ” shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States of America;
- g. “Effective Date” shall mean the date on which this Decree is entered by the Court;
- h. “EPA” shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States of America;
- i. “Facility” shall mean the diesel engine manufacturing facility owned and/or operated by Defendants that is or was located at 400 North Forsythe Street in Franklin, Indiana;
- j. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- k. “Parties” shall mean the United States and the Defendants;

- l. "Section" shall mean a portion of this Decree identified by a Roman numeral;
- m. "State" shall mean the State of Indiana;
- n. "United States" shall mean the United States of America, its departments, agencies and instrumentalities acting on behalf of EPA.

IV. CIVIL PENALTY

6. Within 30 days after the Effective Date of this Consent Decree, or by July 7, 2006, whichever is later, Defendants shall pay to the United States a civil penalty of \$851,012.50. Defendants are each jointly and severally responsible to the United States for this entire civil penalty and any other payments required by this Consent Decree.

7. Defendants shall pay to the United States the civil penalty of \$851,012.50 by Electronic Funds Transfer ("EFT") to the United States Department of Justice ("DOJ") lockbox bank, referencing the civil action number, DOJ case number (90-5-1-1-07927) and USAO file Number 2002 V01120. Payment shall be made in accordance with the EFT instructions available from the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of Indiana, referencing USAO file Number 2002 V01120. Any EFT received at the United States Department of Justice lockbox after 4:00 p.m. (Eastern Time) will be credited on the next business day. At the time of payment, Defendants shall provide written notice to the United States that payment has been made and a copy of any transmittal documentation in accordance with Section VIII of this Decree and to:

Comptroller (MF-10J)
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, IL 60604

Such notice shall reference DOJ case number (90-5-1-1-07927) and the civil action number of this case.

8. If the civil penalty is not fully paid when due, Defendants shall pay interest on the overdue amount, from the original due date to the date of payment, at the statutory judgment rate in accordance with 28 U.S.C. § 1961, in addition to any required penalties set forth in Section V (Stipulated Penalties), and other fees or costs as specified in Section VII (Costs).

9. All payments required by this Consent Decree, including any such payments required under Section V (Stipulated Penalties), are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and are not a tax deductible expenditure for purposes of federal law.

V. STIPULATED PENALTIES

10. If the civil penalty required by Section IV, Paragraph 6, is not fully paid when due, Defendants shall be in violation of this Consent Decree and shall pay to the United States, in addition to the interest required by Paragraph 8, a stipulated penalty of \$1,000.00 per day for each day that the payment is delayed beyond the due date.

11. Any stipulated penalty under this Section is due and payable within 30 days of the date of the demand for payment by the United States and shall be made by a certified or cashier's check(s) in the amount due, payable to the "Treasurer, United States of America," and shall be accompanied by a letter indicating that the payment is for stipulated penalties under this Consent Decree, referencing the case name, civil action number, and DOJ case number (90-5-1-1-07927).

Payments made pursuant to this Section shall be delivered to:

Financial Litigation Unit
Office of the United States Attorney
for the Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048

At the time of each stipulated penalty payment, Defendants shall send written notice to the United States that payment has been made in accordance with Section VIII of this Decree. Such notice shall reference DOJ case number (90-5-1-1-07927) and the civil action number of this case.

12. The United States may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due under this Section.

13. If Defendants fail to pay a stipulated penalty according to the terms of this Section, Defendants shall be liable for interest, pursuant to 28 U.S.C. 1961, on such penalties accruing as of the date payment became due and continuing until paid.

14. Stipulated penalties are not the exclusive civil remedy of the United States for Defendants' violations of this Consent Decree. Subject to the provisions of Section VI of this Consent Decree (Effect of Settlement / Reservation of Rights), the stipulated penalties provided for in this Section shall be in addition to any other rights, remedies or sanctions available to the United States for Defendants' violation of this Consent Decree or applicable law.

VI. EFFECT OF SETTLEMENT / RESERVATION OF RIGHTS

15. Complete performance by Defendants of all of their obligations under this Consent Decree shall resolve the civil liability of the Defendants for the violations alleged in the Complaint in this action through the filing date of such Complaint.

16. Except as expressly specified in Paragraph 15, nothing in this Consent Decree is intended, or shall be construed, to operate in any way to resolve any other civil liability, or any criminal liability, of the Defendants. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters not asserted by the United States in the Complaint in this action.

17. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree.

18. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties or other appropriate relief relating to the Facility, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of Paragraph 15, above.

19. This Consent Decree does not limit or affect the rights of Defendants or of the United States against any person not a party to this Consent Decree, nor does it limit the rights of any person not a party to this Consent Decree against any Defendant, except as otherwise provided by law.

20. This Consent Decree shall not be constructed to create rights in or grant any cause of action to any person not a party to this Consent Decree.

21. This Consent Decree does not alter or relieve Defendants' responsibility to comply with the Clean Water Act, 33 U.S.C. §§1251 *et seq.*, or any other federal, state or local

laws, regulations, or permit conditions. Defendants are responsible for achieving and maintaining complete compliance with all applicable federal and state laws, regulations, and permits. Compliance with this Consent Decree shall not be a defense to any action commenced pursuant to such laws or regulations, except as provided in Paragraph 15.

VII. COSTS

22. The Parties shall bear their own costs of this action, including attorneys' fees, except that Defendants shall be liable for attorneys' fees and costs incurred by the United States to collect any amount due under this Consent Decree.

VIII. NOTICES

23. Unless otherwise specified herein, whenever notifications, submissions or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
PO Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-07927

and

Chief, Water Enforcement and
Compliance Assurance Branch (WC-15J)
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, IL 60604
ATTN: James Coleman

To Defendants:

Phillip R. Scaletta
Ice Miller LLP
One American Square
Suite 3100
Indianapolis, IN 46282-0200

24. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

25. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

IX. RETENTION OF JURISDICTION

26. The Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

X. SIGNATORIES / SERVICE

27. Each undersigned representative of Defendants and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

28. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

29. Defendants shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by regular mail on behalf of each Defendant with respect to all matters arising under or relating to this Consent Decree.

Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons with the Complaint.

XI. INTEGRATION

30. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supercedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document, nor any representation, inducement, agreement, understanding or promise constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XII. FINAL JUDGMENT

31. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States and Defendants. The Court finds that there is no reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

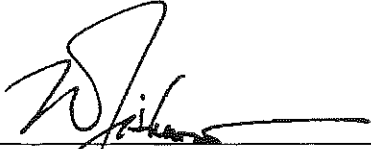
06/22/2006

A handwritten signature in black ink, appearing to be 'JD Tinder', written over a horizontal line.

John Daniel Tinder, Judge
United States District Court

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned as *United States v. Remy International, Inc., and Franklin Power Products, Inc.* (S.D. Ind.):

FOR THE UNITED STATES OF AMERICA:



W. BENJAMIN FISHEROW
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

Date: 6-19-06



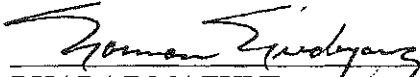
MARC BORODIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Phone: (202) 514-2756
Facsimile: (202) 616-6584
marc.borodin@usdoj.gov


Date: 6/19/06

SUSAN W. BROOKS
United States Attorney for the
Southern District of Indiana

THOMAS E. KIEPER
Assistant United States Attorney
Southern District of Indiana
10 West Market Street, Suite 2100
Indianapolis, IN 46204-3048

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned as
United States v. Remy International, Inc., and Franklin Power Products, Inc. (S.D. Ind.):



 BHARAT MATHUR
Acting Regional Administrator
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, IL 60604

Date: 6/12/06

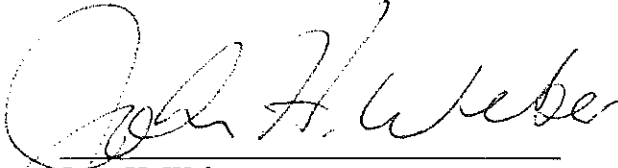


TAMARA CARNOVSKY
Associate Regional Counsel
U.S. EPA Region V
77 West Jackson Blvd.
Chicago, IL 60604

Date: 6-8-06

THE UNDERSIGNED PARTY enters into this Consent Decree in this action captioned as
United States v. Remy International, Inc., and Franklin Power Products, Inc. (S.D. Ind.):

FOR DEFENDANT REMY INTERNATIONAL, INC:



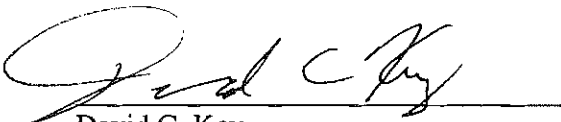
Date: 12 APR 06

John H. Weber
President & Chief Executive Officer
Remy International, Inc.
2902 Enterprise Drive
Anderson, IN 46013

Agent Authorized to Accept Service on Behalf of Above-signed Defendant

Corporation Service Company
251 E. Ohio Street, Suite 500
Indianapolis, IN 46204

FOR DEFENDANT FRANKLIN POWER PRODUCTS, INC:



Date: 4/15/06

David C. Key
Senior Vice President & General Manager
Franklin Power Products, Inc.
400 N. Forsythe Street
Franklin, IN 46131

Agent Authorized to Accept Service on Behalf of Above-signed Defendant

Corporation Service Company
251 E. Ohio Street, Suite 500
Indianapolis, IN 46204